



1997 SENATE BILL 160

April 9, 1997 - Introduced by Senators HUELSMAN, COWLES, A. LASEE, BUETTNER, ZIEN and FARROW, cosponsored by Representatives JENSEN, URBAN, LADWIG, KELSO, ZIEGELBAUER, STASKUNAS, GOETSCH, DOBYNS, F. LASEE, RILEY, ROBSON, PLALE, SERATTI, BOCK, WALKER, SYKORA and GUNDERSON. Referred to Committee on Judiciary, Campaign Finance Reform and Consumer Affairs.

1 **AN ACT to amend** 938.396 (2) (d), 941.29 (2) (intro.), 941.29 (2m), 941.29 (3) and
2 941.29 (4); and **to create** 941.29 (2s) of the statutes; **relating to:** possession of
3 a firearm by certain persons and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, a person may not possess a firearm if he or she is a prior felony offender. A prior felony offender is a person to whom any of the following applies: 1) he or she has been found guilty of a felony; 2) he or she has been adjudicated delinquent as a juvenile for an act that would have been a felony if it had been committed by an adult; or 3) he or she has been found not guilty of a felony by reason of mental disease, defect or illness. In addition, under current law a person is prohibited from possessing a firearm if he or she has been involuntarily committed for treatment in a civil commitment proceeding and ordered not to possess a firearm, if he or she is subject to a domestic abuse or child abuse injunction, or if he or she is subject to a harassment injunction that includes an order not to possess a firearm. If a prior felony offender or other person who is prohibited from possessing a firearm does possess a firearm, he or she may be fined not more than \$10,000 or imprisoned for not more than 2 years or both for the first offense. For a 2nd or subsequent offense, the person may be fined not more than \$10,000 or imprisoned for not more than 5 years or both.

This bill increases the penalty for the possession of a firearm by prior felony offenders. Under the bill, a prior felony offender may be fined not more than \$10,000 or imprisoned for not more than 5 years or both if one of the following applies to the

SENATE BILL 160

prior felony offender: 1) he or she possessed, used or threatened to use a weapon when committing the felony on which the firearm prohibition is based; or 2) the felony on which the firearm prohibition is based is a serious felony, which the bill defines to include serious violations related to homicide, controlled substances, battery, sexual assault, mayhem, kidnapping, taking hostages, arson, armed burglary, armed robbery, carjacking, assault by a prisoner and crimes against children. In addition, if the prior felony offender committed a serious felony, the bill provides for a presumptive minimum sentence of 3 years in prison. A judge may impose a sentence of less than 3 years in prison in such a case, but if the judge does impose a sentence of less than 3 years he or she must place the reasons for doing so on the record.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 938.396 (2) (d) of the statutes is amended to read:

2 938.396 **(2)** (d) Upon request of a court of criminal jurisdiction or a district
3 attorney to review court records for the purpose of investigating and determining
4 whether a person has possessed a firearm in violation of s. 941.29 (2) or (2s), the court
5 assigned to exercise jurisdiction under this chapter and ch. 48 shall open for
6 inspection by authorized representatives of the requester the records of the court
7 relating to any juvenile who has been adjudicated delinquent for an act that would
8 be a felony if committed by an adult.

9 **SECTION 2.** 941.29 (2) (intro.) of the statutes is amended to read:

10 941.29 **(2)** (intro.) ~~A Except as provided in sub. (2s), a~~ person specified in sub.
11 (1) is guilty of a Class E felony if he or she possesses a firearm under any of the
12 following circumstances:

13 **SECTION 3.** 941.29 (2m) of the statutes is amended to read:

14 941.29 **(2m)** Whoever violates ~~this section~~ sub. (2) after being convicted under
15 ~~this section~~ sub. (2) is guilty of a Class D felony.

16 **SECTION 4.** 941.29 (2s) of the statutes is created to read:

SENATE BILL 160

1 941.29 (2s) (a) In this subsection, “serious felony” means any of the following:

2 1. Any felony under s. 961.41 (1), (1m) or (1x) if the felony is punishable by a
3 maximum prison term of 30 years or more.

4 2. Any felony under s. 940.01, 940.02, 940.03, 940.05, 940.09 (1) or (1g), 940.19
5 (5), 940.21, 940.225 (1) or (2), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 943.10 (2),
6 943.23 (1g), (1m) or (1r), 943.32 (2), 946.43, 948.02 (1) or (2), 948.025, 948.03 (2) (a)
7 or (c), 948.05, 948.06, 948.07, 948.08, 948.30 (2), 948.35 (1) (b) or (c) or 948.36.

8 3. The solicitation, conspiracy or attempt, under s. 939.30, 939.31 or 939.32, to
9 commit a Class A felony.

10 4. A crime at any time under federal law or the law of any other state or, prior
11 to the effective date of this subdivision ... [revisor inserts date], under the law of this
12 state that is comparable to a crime specified in subd. 1., 2. or 3.

13 (b) A person specified in sub. (1) is guilty of a Class D felony if he or she
14 possesses a firearm under any of the following circumstances:

15 1. The person possesses a firearm subsequent to the conviction for the felony
16 or other crime, as specified in sub. (1) (a) or (b), and the felony or other crime is a
17 serious felony.

18 2. The person possesses a firearm subsequent to the conviction for the felony
19 or other crime, as specified in sub. (1) (a) or (b), and the person committed the felony
20 or other crime while possessing, using or threatening to use a dangerous weapon.

21 3. The person possesses a firearm subsequent to the adjudication, as specified
22 in sub. (1) (bm), and the adjudication was for an act that, if committed by an adult
23 in this state, would be a serious felony.

SENATE BILL 160

1 4. The person possesses a firearm subsequent to the adjudication, as specified
2 in sub. (1) (bm), and the person committed the act for which he or she was adjudicated
3 delinquent while possessing, using or threatening to use a dangerous weapon.

4 5. The person possesses a firearm subsequent to the finding of not guilty or not
5 responsible by reason of insanity or mental disease, defect or illness, as specified in
6 sub. (1) (c) or (d), and the person was found not guilty of or not responsible for a
7 serious felony by reason of insanity or mental disease, defect or illness.

8 6. The person possesses a firearm subsequent to the finding of not guilty or not
9 responsible by reason of insanity or mental disease, defect or illness, as specified in
10 sub. (1) (c) or (d), and the person committed the act for which he or she was found not
11 guilty or not responsible while possessing, using or threatening to use a dangerous
12 weapon.

13 (c) A person subject to par. (b) 1., 3. or 5. shall be sentenced to a minimum term
14 of 3 years in prison, unless the sentencing court otherwise provides. If the court
15 places the person on probation or imposes a sentence less than the presumptive
16 minimum sentence, it shall place its reasons for so doing on the record.

17 **SECTION 5.** 941.29 (3) of the statutes is amended to read:

18 941.29 (3) Any firearm involved in an offense under sub. (2) or (2s) is subject
19 to s. 968.20 (3).

20 **SECTION 6.** 941.29 (4) of the statutes is amended to read:

21 941.29 (4) A person is concerned with the commission of a crime, as specified
22 in s. 939.05 (2) (b), in violation of this section if he or she knowingly furnishes a person
23 with a firearm in violation of sub. (2) or (2s).

24 **SECTION 7. Initial applicability.**

